13

FILED
JUN 21 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

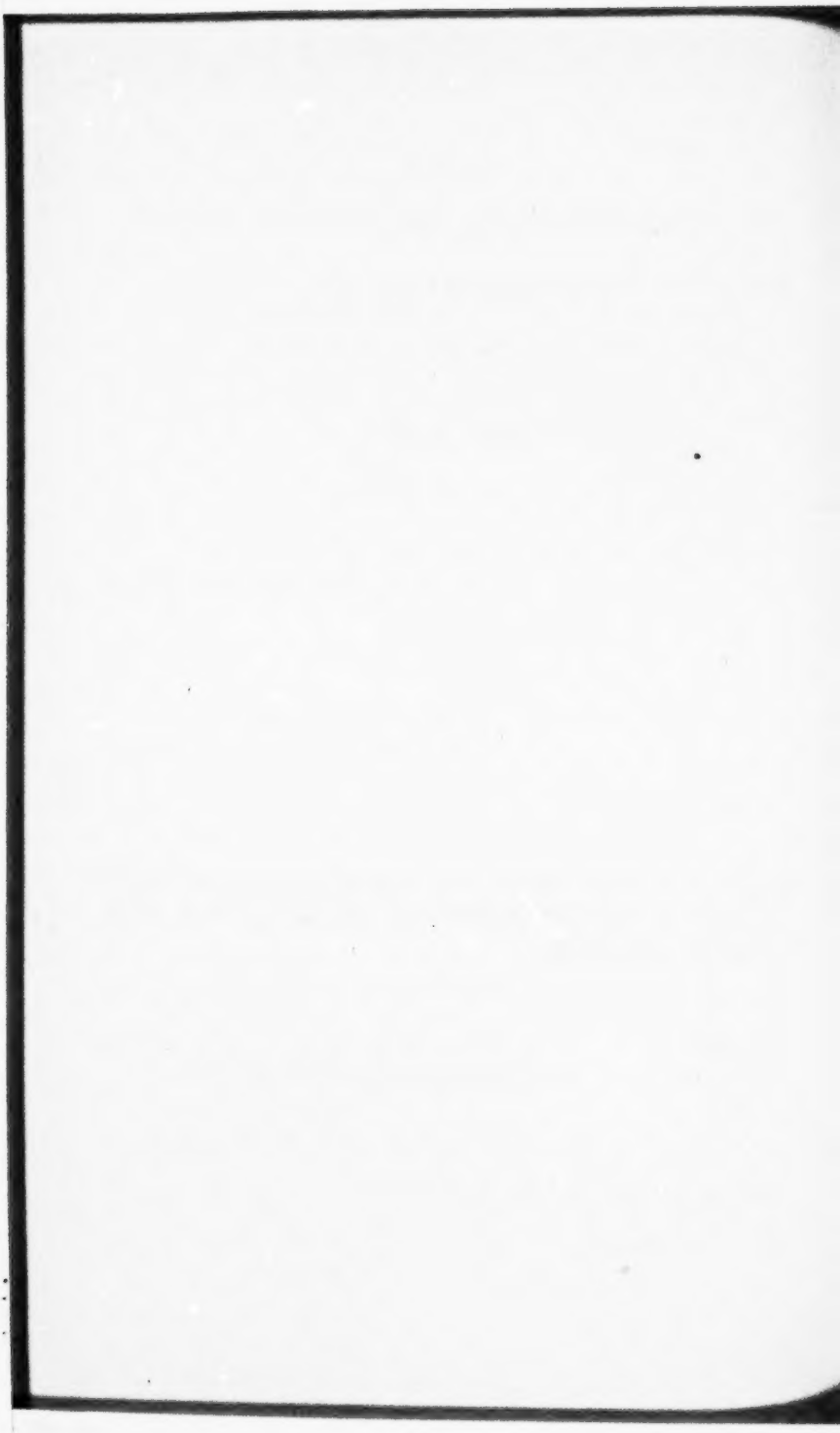
WILLIAM L. BALES,
Petitioner and Appellant Below,

vs.

THE UNITED STATES OF AMERICA,
Respondent and Appellee Below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BYRON G. SKELTON,
Temple National Bank Bldg.,
Temple, Texas,
Attorney for Petitioner.



INDEX

Subject Index

	Page
Petition for Writ of Certiorari	1
Summary Statement of the Case Involved	1
Reasons Relied On for Allowance of Writ	3
Prayer for Writ	4
Signature	4
Brief in Support of Petition	5
Opinion of the Court Below	5
Jurisdiction	5
Statement of the Case	6
Specification of Errors	7
Argument	7
Error No. 1	7
Error No. 2	12
Error No. 3	16
Conclusion	20
Signature	21

Index of Authorities

A

American Jurisprudence, Volume 12, Sections 616, 621 15
American Jurisprudence, Volume 53, Section 748 ..... 9, 11
American Jurisprudence, Volume 53, Page 566 11
American Jurisprudence, Volume 20, Page 400 15

C

(2d) 833 15
Constitution of the United States, Fifth Amendment 3

D

Duthey v. *State*, 10 LRA (NS) 1032 9

H

Page

Handbook of American Constitutional Law, Page 830 14

M

Morris v. *United States*, 156 F. (2d) 525 11

P

Post v. *United States*, 135 F. 1 ..... 3, 16

R

Rule 18, Federal Rules of Criminal Procedure 3, 20

S

Statutes, Title 28, Sec. 1254, U.S.C.A. 5
Screws v. *United States*, 65 Sup. Ct. 1031 11

W

Wilson v. *United States*, 232 U. S. 563 10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES,
Petitioner and Appellant Below,
vs.
THE UNITED STATES OF AMERICA,
Respondent and Appellee Below

PETITION FOR WRIT OF CERTIORARI

To the Honorable Fred M. Vinson, Chief Justice of the United States, and Associate Justices of the United States:

I

Summary Statement of the Case Involved

This proceeding is a criminal prosecution brought by the United States of America against the Petitioner, William L. Bales, charging a violation of Section 2312, Title 18, United States Code. Specifically, the petitioner was charged by indictment that he did "unlawfully, willfully, and knowingly transport in foreign commerce a stolen motor vehicle * * * from San Angelo, Tom Green County, Texas, to and into the Republic of Mexico * * *" (Tr.

1). On October 16, 1950, the petitioner was tried to a jury in the District Court of the United States for the Northern District of Texas at San Angelo, Texas, and, a jury verdict of guilty having been returned on the same date, (Tr. 3) the court entered its Judgment and Commitment finding this petitioner guilty of the offense charged and assessed his punishment at imprisonment for two years and a fine of $500.00 (Tr. 2).

This conviction was duly appealed to the United States Court of Appeals for the Fifth Circuit, was submitted upon brief and argument to said Court on April 2, 1951 and on April 25, 1951, the Appellate Court entered its decision affirming the judgment of the District Court (Tr. 71). On May 5, 1951, the petitioner filed his Petition for Rehearing in the Court of Appeals and on May 30, 1951, said motion was by the Court of Appeals overruled (Tr. 74).

By their original decision, as well as in overruling the Petitioner's Motion for a Rehearing, the Court of Appeals held that there was no reversible error either in the ruling of the Trial Court on the evidence or its instructions to the jury (Tr. 71). In his appeal to the Court of Appeals, the petitioner presented three specifications of error; each of such specification is again urged as grounds for granting petitioner a Writ of Certiorari.

Briefly, the petitioner contends that it was error for the Trial Court to fail to instruct the jury affirmatively that if, the jury entertained, from the whole of the evidence, a reasonable doubt as to the defendant's guilt it was the *duty of the jury to acquit the defendant;* that it was error for the Trial Court to instruct the jury to *disregard all of the testimony* of the petitioner's witness, Rosenda DeAnda, because the testimony of DeAnda was admissible upon the principal issue of petitioner's defense; and that the District Court of the United States for the Northern District

of Texas had no jurisdiction to try and to determine this cause for the reason that under the evidence, the offense, if any, was committed by the petitioner outside of the territorial limits of the Northern District of Texas (Tr. 72-74).

II

Reasons Relied upon for the Allowance of the Writ

(1) The decision of the Circuit Court of Appeals is in violation of the Fifth Amendment of the Constitution of United States in that the erroneous charge of the Trial Court has deprived the petitioner of his liberty and property without due process of law.

(2) The decision of the Circuit Court in effect holding that the Trial Court was not in error in instructing the jury, with reference to the testimony of Rosenda De-Anda, to:

> "Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it."

was error in that it was a denial of petitioner's rights under Fifth Amendment to the United States Constitution, and said decision of the Circuit Court is in conflict with the decision of the Court of Appeals of the Fifth Circuit in the case of *Post* v. *United States,* 135 F. 1, 70 LRA 989.

(3) The decision of the Circuit Court of Appeals in this case is in error in that the Court held there was sufficient evidence to show the alleged offense of petitioner was committed in the Northern District of Texas, said holding being contrary to the uncontradicted evidence and therefore violates Rule 18 of the Federal Rules of Criminal Procedure providing for the jurisdiction of District Courts of the United States in such cases.

III

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the order of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, directing the said Court to certify and send to this Court a full and complete transcript of the record had in the case numbered and entitled on its docket "No. 13,428, William L. Bales, Appellant *vs.* United States of America, Appellee," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States and that the judgment herein of said Circuit Court of Appeals be reversed by the Court and that this Court order the prosecution dismissed, or, in the alternative, to reverse said judgment of conviction and grant this petitioner a new trial herein.

Respectfully Submitted,

BYRON G. SKELTON,
Temple National Bank Bldg.,
Temple, Texas,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES,
Petitioner and Appellant Below,
vs.
UNITED STATES OF AMERICA,
Respondent and Appellee Below

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

To the Honorable Fred M. Vinson, Chief Justice of the United States, and Associate Justices of the United States:

I

Opinion of the Court Below

The opinion of the Circuit Court of Appeals to which this petition is directed is dated April 25, 1951 (Tr. 71).

II

Jurisdiction

The statutory provision which sustains the jurisdiction of this Court, Section 1254, Title 28, United States Code Annotated.

III

Statement of the Case

Petitioner has stated in his petition for Writ of Certiorari the procedural steps that have been taken preceding the filing of his petition for such writ. Such statement also embodies a brief statement of the general nature of this case and said statement is hereby adopted and made a part of this brief.

Your petitioner would also like to call to the Court's attention certain pertinent matters which appear of record. It was uncontradicted that a certain motor vehicle was stolen in San Angelo, Texas, on March 20, 1949 (Tr. 14). It is also uncontradicted that a special agent of the Federal Bureau of Investigation saw the petitioner Bales for the first time on September 18, 1949 (Tr. 23). Taylor, the agent, testified that he had three conversations with Bales concerning the stolen Cadillac car, and Taylor testified that he had three different interviews with Bales, in each of which Bales told a different story about his connection with the car and that in *one* of such interviews Bales told him that he had stolen the car from San Angelo (Tr. 22-26). It is this alleged oral confession upon which the Government actually rests its entire case. The petitioner offered evidence showing he purchased the automobile from one Sam Harris in Piedras Negras, Mexico on March 20th (Tr. 41-42). Petitioner also offered evidence that he was in Eagle Pass, Texas, across the river boundary from Piedras Negras *in his own automobile* on March 20th (Tr. 44-45). The petitioner also offered testimony of a former Chief of Police of Juarez, Mexico, one Rosenda DeAnda, that he knew the particular Sam Harris referred to, but without objection by the Government, or any motion requesting the same, the Court instructed the jury:

> "Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it."

IV

Specification of Errors

1. The Circuit Court of Appeals erred in overruling the petitioner's assertion that the Trial Court erred in failing in his charge to the jury to affirmatively instruct the jury to acquit the petitioner if they should entertain a reasonable doubt of his guilt.

2. The Circuit Court of Appeals erred in holding that the Trial Court was not in error when it instructed the jury to disregard all of the testimony of the petitioner's witness, Rosenda DeAnda, because such testimony was material and admissible upon the principal issue of the petitioner's defense, that is, that the petitioner purchased the vehicle in good faith and was not a thief thereof and therefore did not know that the same was a stolen vehicle.

3. The Circuit Court of Appeals erred in not sustaining petitioner's assertion that under all of the uncontradicted and credible evidence, the offense, if any, proved by the Government took place outside of the territorial limits of the Northern District of Texas, and the District Court thereof, therefore, was without jurisdiction to hear and determine this cause.

V

Argument

Error No. 1

After all of the evidence in this case, and after counsel for the Government and for the petitioner had presented their arguments to the jury the Trial Court charged the jury orally. Upon the law of presumption of innocence, the burden of proof, and the application of reasonable doubt, the Trial Court charged as follows:

> "To this indictment, Gentlemen of the jury, the defendant has entered a plea of Not Guilty, and is pre-

sumed to be innocent of the charge made against him until the government shall have proven his guilt by legal, and, competent evidence beyond a reasonable doubt.

"I charge you, Gentlemen, that that phrase 'reasonable doubt', means the evidence of a conviction in your mind to the same degree, and to the same strength, upon which you yourselves would act in your own most serious personal affairs. It does not mean proof beyond the possibility of a mistake." (Tr. 66)

No other instructions were given pertaining to the matter and there were no words or any other implications from the Trial Court informing and instructing the jury that *it was their duty to acquit the petitioner in the event they entertained a reasonable doubt as to his guilt on consideration of the whole of the evidence.*

The petitioner submits that the charge, in this respect, failed to inform the jury of the whole of their duty and that, although the charge might be considered correct and fair insofar as it goes, said charge was insufficient to constitute a fair charge and was in effect a denial of the rights guaranteed the petitioner under the Fifth Amendment of the Constitution of the United States wherein there is a guarantee that "no person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law."

There is ample precedent and law established by this Court and from well recognized rules of jurisprudence in these United States to state that it is always, and inherently, the duty of a jury in a criminal case to acquit if they should entertain a reasonable doubt as to guilt. *And it is the contention of the petitioner herein that the Trial Court should have so affirmatively charged the jury in this case.*

From American Jurisprudence, Volume 53, Section 748, we quote the following statement:

> "In a criminal case, the jury must be instructed that the crime must be proved beyond a reasonable doubt, *otherwise the accused must be acquitted;* the failure or refusal to do so will ordinarily constitute reversible error. The defendant is entitled to such an instruction in every case and the statute may expressly direct that such instruction be given. *Indeed, it is the duty of the judge to charge without a request.*"

If we may, because the same is a recognized authority quoted in Lawyers' Reports Annotated, we would call the Court's attention to the decision of the Wisconsin Supreme Court in the case of *Duthey* vs. *State,* 10 LRA (NS) 1032. In the following portion of that opinion our position here is well stated and sustained and we quote the following therefrom:

> "The charge before us is unique, in that, from beginning to end there is no express statement to the jury of their duty to acquit if they entertained a reasonable doubt of any of the phases of homicide submitted to them. Doubtless to the legal mind that duty is implied in the very proper general instruction with which the charge was premised—that the presumption of innocence must prevail and defeat conviction, unless overcome by a reasonable doubt. * * * *It is difficult to understand how a Judge could have failed to add at this point the correlative duty, in every respect as imperative,* to find a verdict of Not Guilty, if they entertained any reasonable doubt of both first and second degree murder.'

Perhaps the fullest discussion of just how far the Trial Court should go in putting the burden of proof upon the government and of instructing the jury of their duty in the event they have a reasonable doubt as to the defend-

ant's guilt is illustrated in the Supreme Court decision in the case of *Wilson* vs. *United States,* 232 U. S. 563. From that opinion we quote the following:

> "The court instructed the jury in substance that the arrest of defendants, their indictment by the grand jury, and their argument, were no evidence whatever of their guilt; that the presumption of innocence meant that at the beginning of the trial they were as innocent of the charges as any man in the jury-box; that this presumption continued to abide with the defendants as a complete protection, unless and until it gave way because inconsistent with the existence of a situation proved by the evidence in the case beyond all reasonable doubt; that by that (reasonable doubt) was meant, not the frame of mind of a man endeavoring to find a way out for somebody accused of crime, not a mere capricious doubt, not a frame of mind suggested by something occurring in the trial of the case or in the argument of counsel not based on evidence in the case; but that "reasonable doubt is that frame of mind which forbids you to say, all the evidence considered and weighed, 'I have an abiding conviction of the defendants' guilt,' or as it has been expressed, 'I am convinced of the defendants' guilt to a moral certainty.' If you can say that you have such a conviction, then you have no reasonable doubt, and your verdict should be guilty. *On the contrary, if that is your frame of mind, if you are in the frame of mind where it was a matter of importance to you in your own affairs, away from here, you would pause and hesitate, before acting, then you have a reasonable doubt.*"

The petitioner also submits that the error of the Trial Court was in no way cured or rendered harmless by the attempted definition of the term "reasonable doubt" which the court gave as hereinabove quoted. On the contrary the petitioner insists that such definition only aggravated the

error cited. In this connection petitioner quotes from 53 American Jurisprudence, page 566, wherein the text writer states:

> "It is error to instruct that by the term 'reasonable doubt' is ordinarily meant such a one as would govern or would control jurors in their business transactions or usual pursuits of life or *in the important transactions of life.*"

And from the same volume of American Jurisprudence, in Section 748, we quote the following:

> "It is not enough to tell the jury to give the defendant the benefit of a reasonable doubt without telling in what way or to what extent."

In substantiation of the proposition urged by the petitioner it is contended that it was as much the duty of the Trial Court to instruct the jury *concerning their duty to acquit* as it was to any other essential question of law applicable to this case when it was tried; and this is true whether objections were made or motions suggested it, as pointed out in the Circuit Court case of *William Morris* vs. *United States of America,* 156 F. (2d) 525, in which opinion it is stated:

> "It is self evident the jury must have the law given it in order that it can perform its function."

We would also like to call the court's attention to the language of Mr. Justice Douglas in *Screws* v. *United States* (1945) 325 U. S. 91, 65 Supreme Court 1031, 162 ALR 1330; "And where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it *on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a Federal crime*

are entitled to be tried by the standards of guilt which Congress has prescribed."

To the effect that the Circuit Court may consider errors though no objections were taken in the trial court, see *United States* v. *Perplies,* C.C.A. 7th Circuit, 1948, 165 F. (2d) 874 and authorities there cited.

ERROR No. 2

The record reveals that the Federal Bureau of Investigation Agent, Taylor, upon whose testimony the Government built its case, stated that in his first conversation with the petitioner the latter told him that he had bought the car from one A. G. Harris in January, 1949 (Tr. 17). The same Mr. Taylor testified that in his second conversation with the petitioner, the latter stated that he had taken the car from the "Bryant home" and crossed into Mexico. (Tr. 19). Mr. Taylor also testified that on the next day, and in the third conversation, petitioner told him that he had received the car in Piedras Negras and that he had paid money for it (Tr. 21-22). Thus there were three versions of an alleged oral confession as testified to by the principal Government witness.

The petitioner took the stand in his own behalf and testified that he bought the car in question in Piedras Negras, Mexico from Mr. Sam Harris and offered in support thereof a written instrument which he testified the said Harris had written, reading as follows:

"Piedras Negras Coch
20 March 1947

"Received of William L. Bales

Fifteen Hundred and no/100 dollars ($1500.00) cash in part payment on two tone blue Cadillac—Motor #14513822

Style 4962. Balance of Fifteen hundred dollars ($1,500) to be paid in ten days upon receipt of tittle of papers. Total of ($3000)

s/ SAM HARRIS"

(Tr. 42)

Thus the issue was joined as to how the petitioner came into the possession of the car, and in support of his principal defense, that is, that he, the petitioner, bought the car in good faith from one Sam Harris, the petitioner offered the testimony of Rosenda DeAnda. DeAnda testified that he was a Lieutenant Colonel in the Cavalry of the Republic of Mexico and that he was a former Chief of Police in Juarez, Mexico (Tr. 53). The following question and answer testimony is quoted from the record to show fully the testimony of the said DeAnda that was material and relevant to the defense of the petitioner as above set forth:

"Q. Do you know a man by the name of Sam Harris?

A. Yes, I do.

Q. When did you know him, Mr. DeAnda?

A. In 1948, more or less.

Q. More or less, did you say?

A. Yes, in March, 1948.

Q. How did you happen to know him, Mr. DeAnda?

A. I knew him through a band of known car thieves while I was Chief of Police in Juarez.

Q. You were Chief of Police of Juarez at that time?

A. I was.

Q. When was the end of your term as Chief of Police?

A. Two years and a half I was Chief of Police.

Q. And you knew Mr. Sam Harris during that time?

A. I did not know him personally, but he was shown to me by one of the members of this gang.

The Court: Anything else?

By Mr. Tupper:

Q. Just a minute, Your Honor, please. Did you have occasion to examine this exhibit?

A. It is the first time I see it.

Q. Have you examined some of the signatures of Sam Harris?

A. Sam Harris has used a lot of aliases, this is one of the names he has seen.

Q. This is one of the names he has seen. How many have you seen used?

A. Eight or ten names in his dealings."

(Tr. 53-54)

At the conclusion of the testimony of the petitioner's witness DeAnda, without any objection thereto, and without any motion on the part of the Government's attorney, the Court stated to the jury:

> "Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it. All right, call your next witness." (Tr. 56)

The petitioner submits that the instruction by the Trial Court to disregard the testimony of the substantial corroborating testimony of the defense presented was most certainly error by the Trial Court and was a denial of a fair hearing to the petitioner and a violation of his constitutional rights of due process under the Fifth Amendment. No better statement of the general rule in this connection we think can be found than that of Henry Rottschaefer in his "Handbook of American Constitutional Law" at page 830, where we find the following statement:

> "There could be no fair hearing or trial unless the party whose conduct is sought to be regulated by the proceedings were permitted to introduce evidence in support of his position on the issues involved. Due

> process confers such right upon him, and this includes the right of calling witnesses and to have them testify. This right would be useless but for the duty of those charged with making the decision to consider the evidence in arriving at their decision. This is a part of the right of a party to have the case decided on the basis of the evidence presented at the hearing, but includes also a right to have it based only on evidence so presented."

To the same effect is the opinion of the Supreme Court in the case of *Chin You* v. *United States,* 208 U. S. 8. As stated in Section 616 of Volume 12, American Jurisprudence under the heading Constitutional Law, due process of law protests against arbitrary action. Arbitrary action by the tribunal in the hearing of a cause violates due process. And from the same volume, Section 621 we quote the following language:

> "The right under the due process clause to a full hearing includes the right on the part of the party whose rights are sought to be affected to introduce evidence and have judicial findings based upon it. A party has the right to the opportunity, when in court, to establish any fact, which, according to the usages of common law or provisions of the Constitution, would be a protection to his property or his liberty."

The petitioner submits that the testimony of the witness DeAnda was not hearsay for the simple reason that it went to the very merits and truth or falsity of the petitioner's single contention in the trial that he was a good faith purchaser of an automobile and not a thief thereof. That such testimony is not hearsay is clearly shown in the statements found in Section 451 at page 400 of Vol. 20 of American Jurisprudence.

In holding that it was not error for the Trial Court to give the instruction which is herein complained of, the petitioner submits that the Court of Appeals rendered a

decision in conflict with a prior decision in the same court in the case of *Post* vs. *United States,* 135 F., 70 LRA 989. This case is quite similar in that the judge told the jury to entirely disregard certain evidence. In the decision in that case the Court said:

> "And, under the practice of the Federal Courts, the judge may express his opinion as to the weight or effect of evidence or the credibility of witnesses; but, if evidence is admitted as, and is, legal and relevant, the jury, we think, should not be peremptorily directed to ignore it. If it be of a kind that greatly taxes the credulity of the judge, he can say so, or, if he totally disbelieves it, he may announce that fact, leaving the jury free to believe it or not. If the jury concur in the view expressed by the judge, they may entirely disregard such evidence in their verdict; *but to direct the jury to ignore it is to tell them not to consider it at all, even to determine whether it deserves credence or not.* We are aware of the fact that this instruction related to evidence, part of which, perhaps, would seem to many, if not all, intelligent minds, incredible; but, if evidence is admissible at all, we can see no reason why it is not to be passed on by the jury."

In conclusion, on this specification of error the petitioner submits that the Trial Court's instruction was arbitrary, that it deprived the petitioner of the trial by "due process" as guaranteed by the Fifth Amendment, that it deprived the jury of considering the most material portion of the petitioner's corroborating evidence of his principal defense, and that the court in so holding is in conflict with its prior decision in the case of *Post* vs. *United States,* above cited.

ERROR NO. 3

The record shows that the petitioner herein was brought to trial upon an indictment returned in the District Court of the United States for the Northern District of Texas at San

Angelo (Tr. 1). It is further uncontradicted that the car involved in the case was stolen from San Angelo, Texas, on March 20, 1949, and the indictment so alleges (Tr. 1 and 14).

The ultimate question which the jury was put to decide in this case was whether or not the petitioner had stolen the car in San Angelo, Texas, within the Northern District, and whether he had then transported the same in foreign commerce in contravention of the statute.

In addition to the uncontradicted facts, the government based its prosecution upon the testimony of the F.B.I. Agent, L. C. Taylor, and the testimony of the Mexican official, Joe Pena. With reference to the testimony of the F.B.I. Agent Taylor, there were three conversations allegedly had with the petitioner Bales. Taylor testified that during the first conversation he had with Bales, the latter stated in substance that he was *in Houston* during *January, 1949,* that he met a man named A. G. Harris who sold him the car in question for $3,000.00, that he Bales placed the time as mid-January, 1949, that he returned to San Angelo in the car and immediately left for Mexico on a business trip (Tr. 23). Taylor also testified that he had a second conversation with the appellant Bales and that during that conversation Bales stated he had left his home in San Angelo in his Nash car to go to Mexico and that in passing the M. D. Bryant home he saw the Cadillac involved in this case, went back home, came and took the Cadillac and then drove to Mexico crossing at Piedras Negras (Tr. 24). Taylor also testified to a third conversation with Bales, held the following day, and stated that Bales denied stealing the Cadillac, stated that he had first received the car in Piedras Negras, Mexico, and that he Bales had used his own car, his Nash, in driving from San Angelo to Eagle Pass and that such statement could be verified by checking the use of his gasoline credit card at Del Rio and Eagle Pass (Tr. 25-26). The petitioner's credit slips or receipts on the respective dates

showing the use of the Nash automobile were offered as evidence. Bales also testified about the use of his credit cards and the credit receipts (Tr. 44-45).

The other government witness who testified to the purported oral confessions of Bales was one Joe Pena who identified himself as a police sergeant. He related his presence at at least two of the conversations between Taylor and Bales. The same inconsistent stories were related (Tr. 22).

In answering the contention which is above set forth the government's attorneys set forth the following argument in their brief filed in the Court of Appeals:

> "The prosecution did not contest the appellant's evidence that he was in Eagle Pass, Texas, in his own automobile on the dates involved, nor did the prosecution contest the appellant's evidence of the credit slips, or receipts, on the respective dates showing the use of the Nash automobile for the reasons that it was believed that the jury would consider the credit slips, or receipts, as being fictitious and part of the appellant's alibi, and further that the appellant had been truthful and honest in his conversation and confession to Agent Taylor."

We submit that such an argument is unfounded and that the same represents hindsight and assumes that any of the petitioner's evidence which might *explain* the three alleged conversations had with the Agent Taylor was of no value whatsoever.

And we again call the Court's attention to the argument made herein under Error No. 2. The testimony of the witness DeAnda, we insist, was material and relevant when taken into consideration along with the uncontradicted evidence supplied by the sales slips referred to in this argument. We submit that we are entitled to the contention, fairly made and substantially supported, that under all of

the testimony, particularly with reference to that which is *consistent* and undisputed except by *ex parte* statements in a brief, and when taken in its most favorable light to the government's case, shows, if it shows anything at all, that the only possible acts attributable to the petitioner occurred in Eagle Pass, Texas or across the Rio Grande in the Republic of Mexico. It is conceded, we assume, that Eagle Pass, Texas, and the highway and streets from that city leading to the Republic of Mexico are not within the territorial limits of the Northern District of Texas.

The argument is also made upon the proposition that the first conversation allegedly attributable to the petitioner concerning his acquisition of the car in mid-January, 1949, could not possibly be true for the simple reason that it is not alleged that the car was stolen until March, 1949, and the government's proof from Mrs. Allen (Tr. 14) shows that it was on March 20, 1949, that the car was first stolen. The second conversation allegedly attributable to the petitioner is certainly inconsistent with the first and third conversations and is absolutely disproved by the introduction of the gasoline sales receipts and credit slips referred to. The Government did not even contest the evidence that Bales was in Eagle Pass in his own Nash automobile on the dates involved and that his credit card was used and that it was used by him for his own car as the record reveals as heretofore pointed out. The third conversation allegedly attributable to the petitioner is the only one consistent with the other uncontradicted testimony, that is, that he, Bales, first saw the car in Eagle Pass, Texas, was not the thief thereof, and that he had not taken the same from San Angelo or any place from within the Northern District of Texas. If this conversation be taken in its most favorable light to the government it would still leave the question of guilt dependent upon whether the petitioner knew the car was stolen, and, even if the jury believed him guilty of knowing the car

was stolen and receiving it, any act of any kind attributable to the petitioner would be shown to have been done in Eagle Pass, Texas, which is not within the Northern District of Texas as pointed out. THERE IS ABSOLUTELY NO EVIDENCE, CIRCUMSTANTIAL OR OTHERWISE, WHICH WOULD INDICATE THAT THE APPELLANT, IF HE KNEW THE CAR WAS STOLEN, KNEW THAT IT WAS STOLEN FROM SAN ANGELO OR THAT IT HAD EVER BEEN IN THE NORTHERN DISTRICT OF TEXAS.

Rule 18 of the Federal Rules of Criminal Procedure provides:

> "Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trials shall be had in a division in which the offense was committed."

With no evidence showing a connection between Bales and some one other who may have stolen the car in the Northern District, and the only consistent manner of fitting any of the alleged confessions of Bales to the other uncontradicted testimony being to believe that Bales' first connection with the car was either in Eagle Pass, as the F. B. I. Agent testified Bales told him, or in the Republic of Mexico, as Bales testified, we submit that there is no offense shown to have been committed by this petitioner within the territorial limits of the Northern District of Texas.

VI

Conclusion

Believing from the whole of the record that the evidence is wholly insufficient to sustain a conviction in this case particularly because the guilt of the appellant could only be sustained by virtue of several purported oral confessions made after arrest and to the officers of the state and Federal

Government, which purported confessions are three in number and inconsistent as well as disproved by other government testimony, and believing that the charge of the learned Trial Judge failed to charge the jury correctly and fully upon their duty to acquit in the event of reasonable doubt, and believing finally that the Trial Court erred in telling the jury to disregard the testimony of Rosenda DeAnda who presented the real and actual defense of the petitioner, we submit that this cause should be reviewed and a different disposition made of the same.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers and that this Court should grant a Writ of Certiorari, thereafter reviewing and reversing the decision of the Court of Appeals for the Fifth Circuit, and order the prosecution dismissed for lack of jurisdiction; or, in the alternative, to reverse the decision and judgment of conviction and grant petitioner a new trial herein.

Respectfully submitted,

BYRON G. SKELTON,
Temple National Bank Bldg.,
Temple, Texas,
Attorney for Petitioner.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and Rules involved	2
Statement	3
Argument	8
Conclusion	14

CITATIONS

Cases:

Cave v. *United States*, 159 F. 2d 464, certiorari denied, 331 U. S. 847	9
Dinger v. *United States*, 28 F. 2d 548	11
Hopt v. *Utah*, 120 U. S. 430	10
Jarvis v. *State*, 138 Ala. 17, 34 So. 1025	11
Johnson v. *United States*, 318 U. S. 189	9
Kempe v. *United States*, 160 F. 2d 406, certiorari denied, 331 U. S. 843	9
Ng Sing v. *United States*, 8 F. 2d 919	11
Nordgren v. *United States*, 181 F. 2d 718	9
People v. *Jenkins*, 353 Ill. 152, 187 N. E. 148	11
Raffour v. *United States*, 284 Fed. 720	11
Sawyear v. *United States*, 27 F. 2d 569, certiorari denied, 278 U. S. 650	11
Screws v. *United States*, 325 U. S. 91	9
Spevak v. *United States*, 158 F. 2d 594, certiorari denied, 330 U. S. 821	11
State v. *Jackson*, 346 Mo. 474, 142 S.W. 2d 45	11
United States v. *Atkinson*, 297 U. S. 157	9, 10
United States v. *McGuire*, 64 F. 2d 485, certiorari denied, 290 U. S. 645	11
Zimberg v. *United States*, 142 F. 2d 132, certiorari denied, 323 U. S. 712	12

Statute:

18 U.S.C. 2312	2, 4

Miscellaneous:

Federal Rules of Criminal Procedure:

18	3
30	3, 8
52(b)	9

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 71) is reported at 188 F. 2d 472.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1951 (R. 72) and a petition for

a rehearing was denied on May 30, 1951 (R. 72-74). The petition for a writ of certiorari was filed on June 21, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether the court erred in failing affirmatively to instruct the jury on its own motion that they should acquit if they had reasonable doubt as to petitioner's guilt, where the court's charge covered the presumption of innocence and the requirement that the Government prove guilt beyond a reasonable doubt.

2. Whether the court erred in excluding hearsay evidence on its own motion and telling the jury to disregard it.

3. Whether there was evidence that petitioner unlawfully and knowingly transported in foreign commerce a stolen automobile from San Angelo, Texas, in the Northern District of Texas, to Mexico, so that prosecution in a court of that district was proper under Rule 18 of the Federal Rules of Criminal Procedure.

STATUTE AND RULES INVOLVED

18 U.S.C. 2312 provides:

> Transportation of stolen vehicles
>
> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined

not more than $5,000 or imprisoned not more than five years, or both.

Rule 18, F. R. Crim. P., provides:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division in which the offense was committed.

Rule 30, F. R. Crim. P., provides:

> At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

STATEMENT

The indictment (R. 1) charged that petitioner "did unlawfully, wilfully, and knowingly trans-

port in foreign commerce a stolen motor vehicle, to wit, a 1948 model Cadillac * * * from San Angelo, Tom Green County, Texas, within the San Angelo Division of the Northern District of Texas, and within the jurisdiction of this Court, to and into the Republic of Mexico, a foreign country, to wit, to Piedras Negras, * * * in the said Republic, * * * and at the time the said [petitioner] so transported the said motor vehicle in foreign commerce, he then and there well knew the said motor vehicle to have been stolen" in violation of 18 U.S.C. 2312, *supra,* pp. 2-3. The evidence adduced at the trial may be summarized as follows:

On March 20, 1949, a 1948 four-door Cadillac automobile, owned by a Mrs. Gus Allen, was stolen from the front of her parents' home in San Angelo, Texas (R. 14-15). On September 17, 1949, it was discovered in the possession of one Cardenas in Laredo, Texas (R. 16, 19, 27). Cardenas had purchased the car from one Silva in Mexico (Gov. Ex. 1, R. 21; R. 16-18, 22). Since petitioner had sold the car to Silva (R. 23, 24), a friend of Cardenas telephoned petitioner at San Angelo requesting him to come to Laredo to straighten out the difficulty about the title to the car (R. 34, 37-38).

After his arrival at Laredo, petitioner was questioned, without threats or coercion of any kind, by F.B.I. agent Taylor in three different conversations lasting about a half an hour on each occasion (R. 28, 32-33). (1) In the first interview on

September 18, 1949, petitioner stated that, while at a gambling establishment in Houston in January 1949, he paid $3,000 for a 1948 Cadillac to one A. G. Harris, who had lost a lot of money shooting dice, and Harris agreed to send a bill of sale or title to the car to San Angelo. After petitioner returned to San Angelo in the Cadillac he immediately took it into Mexico on a business trip. At Mexico City, where he went after leaving Piedras Negras, the car was damaged in a collision with a streetcar. He then sold the damaged car to Silva for $1,800. (R. 23.) (2) In the second interview, which also took place on September 18, petitioner stated that on March 20, 1949, after he had left his home in San Angelo in his Nash car to go to Mexico on a business trip, he decided to steal one of the cars parked in a circular driveway in San Angelo. After taking his Nash home, he walked to the parked "1948 Cadillac sedan which he drove to Mexico, crossing at Piedras Negras." After having a collision in Mexico City with a streetcar which damaged the Cadillac, he sold it to Silva for $1,800. (R. 24.)[1] (3) In the third interview, which occurred on the following day (September 19), petitioner's story was that he did not steal the car in San Angelo, but that he received it in Eagle Pass, Texas, after he paid money to the man who had

[1] The first two conversations which petitioner had with F.B.I. agent Taylor were in the presence of one Pena, a police sergeant at Laredo, who substantially corroborated the testimony of Taylor (R. 32).

stolen it, and that he then took the car into Mexico. Petitioner stated that he had used his own Nash car in driving from San Angelo to Eagle Pass, a fact which could be verified by gasoline credit cards he used at Del Rio and Eagle Pass in obtaining service on the Nash. (R. 25-26, 65.)

According to F.B.I. agent Taylor, petitioner admitted that he had prepared in his home the bill of sale for the Cadillac (Gov. Ex. 1, R. 21) by using the notary seal of a deceased notary public, and that he had mailed the document to Silva in Mexico City (R. 24-25). Petitioner also admitted in his own testimony that he had executed this paper (R. 47). In addition, the testimony of both agent Taylor and petitioner showed that petitioner admitted signing the original of Government Exhibit No. 2 (R. 62-65), which was a certified copy of a six-month Mexican tourist permit for a Cadillac automobile, issued to petitioner and dated March 20, 1949 (R. 25, 26, 48).

Contrary to evidence presented by the Government, petitioner took the stand on his own behalf and denied that he had told Sergeant Pena or F.B.I. agent Taylor that he had stolen the Cadillac car (R. 46, 47). His story was that he had purchased it from Sam Harris at Piedras Negras, Mexico, on March 20, 1949, where he paid $1,500 cash on a total purchase price of $3,000 and received a receipt (Def. Ex. 1, R. 42) for this payment signed by Harris (R. 43-44, 49). He related

that he drove his Nash car to Mexico on the day he bought the Cadillac, and had gasoline receipts for the service of his Nash car on that date at Del Rio and Eagle Pass (R. 44-45, 65).

On behalf of petitioner, one De Anda, the former Chief of Police of Juarez, testified through an interpreter that a man named Sam Harris was shown to him in 1948 by one of the members of a band of known car thieves. He was then asked by petitioner's counsel (R. 54):

> Q. * * * Did you have occasion to examine this exhibit [apparently Def. Ex. 1, the receipt signed by Sam Harris, R. 42]?
>
> A. It is the first time I see it.
>
> Q. Have you examined some of the signatures of Sam Harris?
>
> A. Sam Harris has used a lot of aliases, this is one of the names he has seen.

Then after some testimony explaining the regulations about permission for cars to come into Mexico (R. 54-55), he was asked (R. 55-56):

> Q. Do you know whether or not Sam Harris wrote this [apparently referring to Def. Ex. 1, R. 42]?
>
> A. He doesn't know that.
>
> Mr. Binion (Asst. U.S. Attorney): That is all. Wait just a minute.
>
> The Court: You never talked to Sam Harris at all?
>
> A. No, sir.

The Court: Somebody else told you that somebody was named Sam Harris?

A. One of the members of the gang.

The Court: I say, somebody told him?

A. Yes, pointed to him.

The Court: Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it.

The jury having found petitioner guilty, the court sentenced him to a $500 fine and two years' imprisonment (R. 68, 69-70). On appeal, the Court of Appeals affirmed the judgment of the lower court and overruled a petition for a rehearing (R. 72-74).

ARGUMENT

1. Petitioner's contention that it was reversible error for the trial court to fail, of its own motion, affirmatively to instruct the jury that it was their duty to acquit him if they had reasonable doubt as to his guilt upon a consideration of all the evidence (Pet. 8) is without merit since the trial court did charge on the presumption of innocence and the necessity of proving guilt beyond a reasonable doubt (R. 66). At the trial petitioner made no request that the court give the instruction he now asserts was required, nor did he object to the giving of the court's charge without including it.

Rule 30, F. R. Crim P., *supra,* p. 3, provides that the parties may file written requests for instructions, and states that "no party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury re-

tires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." However, Rule 52(b), F. R. Crim. P., directs that "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." In *Nordgren* v. *United States,* 181 F. 2d 718, 722-723 (C.A. 9), the court stated:

> The federal appellate courts, mindful of the requirements of Rule 30 of the Criminal Rules, 18 U.S.C.A., seldom reverse for failure to give instructions in the absence of a seasonable request, and will do so only if the omission appears to have been so seriously prejudicial as to lead the court to believe that the accused was not given a fair trial.

See also *Kempe* v. *United States,* 160 F. 2d 406, 411 (C.A. 8), certiorari denied, 331 U.S. 843; *Cave* v. *United States,* 159 F. 2d 464, 469 (C.A. 8), certiorari denied, 331 U.S. 847. Normally this Court will not take note of an error where no exception is taken to the trial court's charge, *Johnson* v. *United States,* 318 U.S. 189, 200; but it has done so only where the error was fundamental, e.g., where there was a failure to submit to the jury the essential elements of the only offense on which a conviction could rest. *Screws* v. *United States,* 325 U.S. 91, 107. See also *United States* v. *Atkinson,* 297 U. S. 157, 160.

In the instant case, the omission from the court's

charge of an affirmative instruction to direct an acquittal did not seriously prejudice petitioner so that he did not get a fair trial, thereby affecting the "fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson, supra.* Rather, he was not prejudiced at all. The charge covered the presumption of innocence and defined reasonable doubt correctly.[2] In stating that petitioner "is presumed to be innocent of the charge made against him until the government shall have proven his guilt by legal, and, competent evidence beyond a reasonable doubt" (R. 66), it clearly implied that the jury should acquit him if they had a reasonable doubt as to his guilt upon a consideration of all the evidence,[3] that being all that petitioner contends was erroneously omitted from the instructions and should have been supplied by the court on its own motion. Even the failure of a court to mention in its instructions the presumption as to an accused's innocence has been held not reversible error, where the omission was not called to the

---

[2] Although petitioner urges that the instruction defining reasonable doubt (R. 66) was error (Pet. 10-11), it was in harmony with the following instruction approved in *Hopt* v. *Utah*, 120 U.S. 430, 439: "* * * if, after * * * consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt."

[3] See also the following part of the court's charge (R. 67):

"If you find Not Guilty you simply write your verdict, 'We, the Jury, find the defendant Not Guilty,' and sign by your foreman whom you shall have previously chosen."

court's attention and no exception was taken. *Spevak* v. *United States,* 158 F. 2d 594, 598 (C.A. 4), certiorari denied, 330 U.S. 821; *United States* v. *McGuire,* 64 F. 2d 485, 493, certiorari denied, 290 U.S. 645; *Dinger* v. *United States,* 28 F. 2d 548, 550 (C.A. 8). The same is true with respect to failure to define reasonable doubt. *Sawyear* v. *United States,* 27 F. 2d 569, 571 (C.A. 9), certiorari denied, 278 U.S. 650; *Raffour* v. *United States,* 284 Fed. 720 (C.A. 9). It is submitted that these are much more substantial omissions than that asserted by petitioner.

2. There is no substance in petitioner's contention that the court erred in excluding of its own motion [4] certain testimony of his witness De Anda (Pet. 14). See, *supra,* pp. 7-8. Apparently petitioner wanted to show that De Anda knew Sam Harris and that he could identify Harris' signature on Def. Ex. 1, R. 42, in corroboration of petitioner's defense that he had paid $1,500 cash to Harris at Piedras Negras, Mexico, as part payment on the Cadillac. However, De Anda testified that he did not know Harris personally but only through a band of car thieves, one of whom pointed Harris out to him (R. 54, 55); and he was unable to identify Harris' signature on Def. Ex. 1 (R. 55). After

---

[4] A court may exclude inadmissible evidence on its own motion though no objection is made thereto. Cf. *State* v. *Jackson,* 346 Mo. 474, 483, 142 S. W. 2d 45, 50; *People* v. *Jenkins,* 353 Ill. 152, 158, 187 N. E. 148, 150-151; *Jarvis* v. *State,* 138 Ala. 17, 37, 34 So. 1025, 1032. See also *Ng Sing* v. *United States,* 8 F. 2d 919, 920-921 (C.A. 9).

the court ascertained that De Anda had never talked to Harris, but someone had merely said there was a Sam Harris and pointed him out to De Anda, the court ruled (R. 56):

> Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it.

Since it appears that De Anda's knowledge of the existence of a Sam Harris was derived solely from hearsay received from a member of a band of car thieves who had pointed Harris out to him,[5] the court's action in excluding such evidence was clearly proper.[6]

3. Finally, petitioner contends that there was no evidence to show that the offense charged was committed in the Northern District of Texas, so that the prosecution was not in accordance with Rule 18, F. R. Crim. P., *supra*, p. 3 (Pet. 16-20). This argument erroneously ignores the second of the three conversations petitioner had with F.B.I. agent Taylor (see *supra*, p. 5).

---

[5] De Anda did not and could not, from his own observation and knowledge testify about Sam Harris. Cf. *Zimberg* v. *United States*, 142 F. 2d 132, 135 (C.A. 5), certiorari denied, 323 U.S. 712: "Ordinarily in the interest of accuracy a lay witness' testimony should be confined to statements of concrete facts within his own observation, knowledge and recollection, that is, to facts perceived by the use of his own senses as distinguished from his opinions, inferences, impressions or conclusions drawn from such facts."

[6] See R. 57, where the court of its own motion also excluded as hearsay, testimony by the witness Rohoff that he knew Harris through one of the members of the gang of car thieves.

In this second interview Taylor, corroborated by Pena, stated that petitioner narrated the following story (R. 24, 32):

> * * * that on the morning of March 20, 1949, he had left his home here in San Angelo in his Nash car to go to Mexico on a business trip. That in passing the M. D. Bryant home he saw a number of cars parked in a circular driveway. That he decided to steal one of these cars, drove his Nash back home, walked over to the Bryant home, and took the 1948 Cadillac sedan which he drove to Mexico, crossing at Piedras Negras.

There was ample evidence of the fact that petitioner had unlawfully transported in foreign commerce the stolen Cadillac from San Angelo, in the San Angelo Division, Northern District of Texas, to Piedras Negras, Mexico, so that there was proper venue in the trial court within Rule 18, F. R. Crim. P.

Granted that the first and third interviews petitioner had with Taylor were inconsistent with the second (see *supra,* pp. 4-6) and that the third interview considered together with his own testimony was the most helpful to petitioner, there was merely a conflict in the evidence. The credibility of the witnesses being for the jury, they resolved this conflict, as they could properly do, in favor of Taylor's version as to petitioner's second conversation confessing his guilt, and against petition-

er's explanation that he purchased and took possession of the car for the first time in Mexico, and not in San Angelo, Texas. It was immaterial that the Government did not present evidence directly to disprove petitioner's testimony about the gasoline credit receipts for his Nash car at Eagle Pass and Del Rio (R. 44-45, 65), since this was part of petitioner's explanation which the jury did not choose to believe.

CONCLUSION

The case involves no conflict or question of general importance. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

JAMES M. MCINERNEY,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

AUGUST 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 981830 86

15

Office-Supreme Court, U. S.
FILED
OCT 2 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

BYRON G. SKELTON,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Reply brief of petitioner	1
Reply to the second question presented by the government's brief	1

Authorities

Constitution of the United States, Fifth Amendment	5
Post v. *United States*, 135 F. 1, 70 LRA 989	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

Reply to the Second Question Presented by the Government's Brief

The Petitioner does not agree with the Government that the second question involved in this appeal is as quoted on page 2 of its brief as follows:

> "2. Whether the court erred in excluding hearsay evidence on its own motion and telling the jury to disregard it."

because such a statement assumes that the excluded evidence was in fact hearsay when in truth and in fact such evidence was not hearsay and was in all respects competent, relevant and admissible evidence that was vital to Petitioner's defense.

The Second Specification of Errors appearing on page 7 of Petitioner's Petition for a Writ of Error is as follows:

> "2. The Circuit Court of Appeals erred in holding that the Trial Court was not in error when it instructed the jury to disregard all of the testimony of the Petitioner's witness, Rosenda DeAnda, because such testimony was material and admissible upon the principal issue of the Petitioner's defense, that is, that the Petitioner purchased the vehicle in good faith and was not a thief thereof and therefore did not know that the same was a stolen vehicle."

The testimony in question is as follows:

> "Q. Will you state your name?
>
> By Interpreter:
>
> A. Rosenda DeAnda.
> Q. Where do you live Mr. DeAnda?
> A. Juarez.
> Q. In the Republic of Mexico?
> A. Yes.
> Q. And what is your business, please?
> A. He is a military man.
> Q. What kind of military?
> A. Lieutenant Colonel in the cavalry.
> Q. Do you know the defendant, Billy Bales?
> A. Yes, I do.
> Q. How long have you known him?
> A. 1944.
> Q. Do you know a man by the name of Sam Harris?
> A. Yes, I do.
> Q. When did you know him, Mr. DeAnda?
> A. In 1948, more or less.

Q. More or less, did you say?
A. Yes, in March, 1948.
Q. How did you happen to know him, Mr. DeAnda?
A. I knew him through a band of known car thieves while he was Chief of Police in Juarez.
Q. You were Chief of Police of Juarez at the time?
A. I was.
Q. You were Chief of Police?
A. I was.

* * * * * * *

Q. Did you have occasion to examine this exhibit?
A. It is the first time I see it.
Q. Have you examined some of the signatures of Sam Harris?
A. Sam Harris has used a lot of aliases, this is one of the names he has seen.
Q. This is one of the names he has seen. How many have you seen used?
A. Eight or ten names in his dealings" (R. 53-54).

After giving the foregoing testimony, the witness DeAnda was cross-examined by the district attorney regarding the practice of issuing permits for entry into Mexico, and after such cross-examination (R. 54-55), the Trial Court asked the witness the following questions:

"The Court: You never talked to Sam Harris at all?
A. No, Sir.
The Court: Somebody else told you that somebody was named Sam Harris?
A. One of the members of his gang.
The Court: I say, somebody told him?
A. Yes, pointed to him" (R. 55).

The Court then made the following statement:

"Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it" (R. 56).

Such statement from the court had the effect of excluding from the jury that portion of such witness' testimony to the effect that he knew Sam Harris. It will be recalled that the witness was asked the direct question "Do you know a man by the name of Sam Harris?" and the witness answered, "Yes, I do." Such answer was in unequivocal terms. He further testified when and where he had known him. The ruling of the court had the effect of removing such direct testimony from the jury. This evidence was not hearsay.

This excluded testimony was vital to the defense of the petitioner, because he had testified that he had purchased the car in question from one Sam Harris. The theory of the Government was that no such man existed. The testimony of the Witness DeAnda showed that he not only existed, but that he knew him in 1948 and that he used various aliases. But the exclusion of all of this evidence by the ruling of the court prevented the jury from considering it and caused the jury to believe the theory of the Government and caused the conviction of the petitioner.

The Court of Appeals was in error in holding that the Trial Court was not in error in excluding such evidence, and such holding is in conflict with a prior decision in the same court in the case of *Post* v. *United States,* 135 F. 1, 70 L. R. A. 989. In that case, just as in the case at bar, the judge told the jury to entirely disregard certain evidence. The Court of Appeals held it to be error in the following language:

> "And, under the practice of the Federal Courts, the judge may express his opinion as to the weight or effect of evidence or the credibility of witnesses; but, if evidence is admitted as, and is, legal and relevant, the jury, we think, should not be peremptorily directed to ignore it. If it be of a kind that greatly taxes the credulity of the judge, he can say so, or, if he totally

disbelieves it, he may announce that fact, leaving the jury free to believe it or not. If the jury concur in the view expressed by the judge, they may entirely disregard such evidence in their verdict; but to direct the jury to ignore it is to tell them not to consider it at all, even to determine whether it deserves credence or not—if evidence is admissible at all, we can see no reason why it is not to be passed on to the jury."

This action on the part of the Trial Court deprived the Petitioner of a fair and impartial trial as guaranteed to him by the Fifth Amendment of the Constitution of the United States, and caused his conviction.

Petitioner renews his prayer that his petition be granted.

BYRON G. SKELTON,
Temple National Bank Building,
Temple, Texas,
Attorney for Petitioner.

CERTIORARI DENIED